

Applicant: Richard P. Aguilar

Agent: Garcia/Kraemer & Assoc.

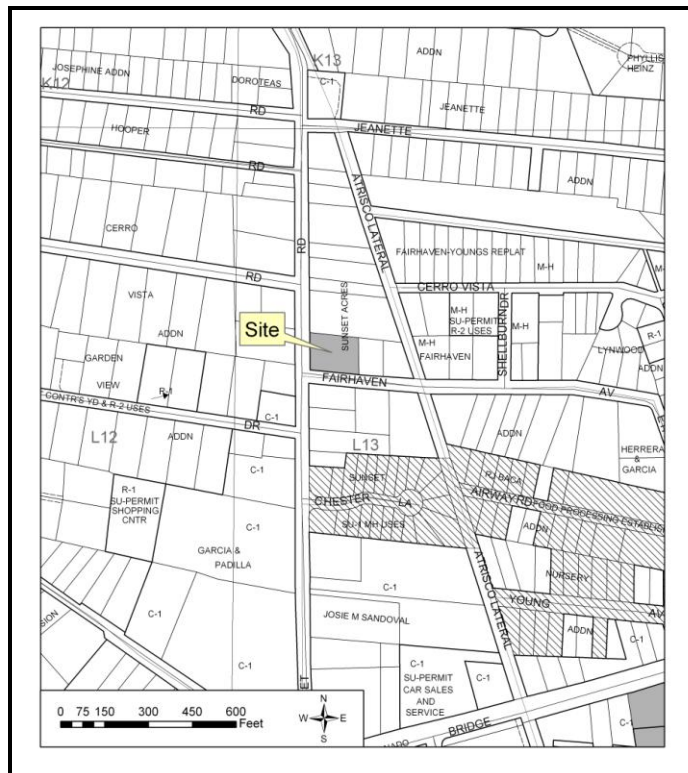
Location: 720 Sunset Road SW

Property Size: .49 acres (approximately)

Existing Zone: R-1

Proposed Request: Special Use Permit for Specific Use for Multiple Single Family Dwellings

Recommendation: Deferral



Summary: The applicant is requesting a Special Use Permit for Specific Use for Multiple Single Family Dwellings on approximately .49 acres located at 720 Sunset Road SW. This request is a result of owner being notified that of a violation of the Zone Code for R-2 uses in an R-1 zone. The two single family dwellings and a duplex currently exist on the subject site.

The subject site is located in the Established Urban Area as designated in the Albuquerque/Bernalillo County Comprehensive Plan and Residential Area Five (5) of the Southwest Area Plan.

Staff Planner: Adella Gallegos, Associate Program Planner

- Attachments:**
1. Application
 2. Land Use Map
 3. Notice of Violation Dated February 5, 2010.
 4. Site Plan (Commissioners Only)

Bernalillo County Departments and other interested agencies reviewed this application from 5/25/10 to 6/14/10. Agency comments are verbatim and were used in preparation of this report, which begin on page 12.

AGENDA ITEM NO.: 20
County Planning Commission
July 7, 2010

CSU-20100021 Garcia/Kraemer & Associates agent for Richard P. Aguilar, requests approval of a Special Use Permit for a Specific Use for Multiple Single Family Dwellings on Lot 5, Sunset Acres Subdivision, located at 720 Sunset Road SW, zoned R-1, containing approximately 0.49 acres. (L-13)

AREA CHARACTERISTICS AND ZONING HISTORY

Surrounding Zoning & Land Uses

Site	Zoning	Land Use
	R-1	Two Single Family Dwellings and a Duplex
North	R-1	Single Family Dwellings
South	R-1	Single and Multi-Family Dwellings
East	R-1	Single and Multi-Family Dwellings
West	R-1	Single and Multi-Family Dwellings

BACKGROUND:

The Request

The applicant is requesting a Special Use Permit for a Specific Use for Multiple Single Family Dwellings on a .48 acre (approximately) tract of land located at 720 Sunset Road SW. Existing on the site are two single family dwellings and a duplex.

This request is a result of a Notice of Violation dated February 5, 2010 for R-2 uses in an R-1 zone.

Request Justification

The applicant contends there are changed community conditions in that there are "other Special Use Permits to allow existing uses to remain, the piecemeal extension of the Municipal Boundary in the vicinity and the nearby commercial zoning."

Surrounding Land Use and Zoning

The subject site is zoned R-1 and surrounded with R-1 zoning developed with residential dwellings. Although the surrounding zoning is R-1, there appears to be a number of properties with multifamily dwellings on surrounding properties.

A Special Use Permit for a Contractor's Yard and R-2 Uses (CSU-70045) was approved just west (approximately 500 feet) of the subject site at 1535 Airway Road SW. This site is developed with a single family dwelling, apartments and a contractor's yard. In addition, SU-1 for a Mobile Home Development, within the municipal limits, approximately 275 feet south of the subject site. This site is developed with mobile homes. C-1 zoning exist approximately 250 feet southwest of the subject site developed with commercial uses.

The latest zoning activity in the area was the approval of a Special Use Permit for a Contractor's Yard and R-2 Uses (CSU-70045) approved by the Board of County Commissioners on January 29, 2009.

Site History

Two single family dwelling, a storage shed and a barn existed on the site prior to zoning. In 1977 the owners received approval of a Non Conforming Use for two single family dwellings, a barn and a storage shed. Thereafter conversions of the structures occurred resulting in the development of two residential dwelling and three additional dwellings (apartments). The owners were then notified that the conversions were not in compliance with the Zone Code and to discontinue using this location for R-2 uses and conducting a commercial business in an unapproved zone. The owners then applied for a zone map amendment from R-1 to R-2. This request was denied by the Board of County Commissioners in February of 1999. In 2002 and again in 2010, the Zoning Enforcement Division continued notifying the owners of the violations of the Zone Code.

APPLICABLE PLANS AND POLICIES:

Albuquerque/Bernalillo County Comprehensive Plan

The site is located in the Established Urban Area of the Albuquerque/Bernalillo County Comprehensive Plan. The Goal for this land use area is to create a quality urban environment

which perpetuates the tradition of identifiable, individual but integrated communities with the metropolitan area and which offers a variety and maximum choice in housing, transportation, work areas and life styles, while creating a visually pleasing built environment.

Policy a states that the Established and Developing Urban Areas shall allow a full range of urban land uses, resulting in an overall gross density of up to five dwelling units per acre.

Policy d states that the location, intensity, and design of new development shall respect existing neighborhood values, natural environmental conditions and carrying capacities, scenic resources and resources of other social, cultural, or recreational concern.

Policy e states that new growth shall be accommodated through development of areas where vacant land is contiguous to existing or programmed urban facilities and services and where the integrity of existing neighborhoods can be assured.

Policy f states that "Clustering of homes to provide larger shared open areas and houses oriented toward pedestrian or bikeways shall be encouraged."

Policy g states "Development shall be carefully designed to conform to topographical features and include trail corridors in the development where appropriate."

Policy i states that employment and service uses shall be located to complement residential areas and shall be sited to minimize adverse effects of noise, lighting, pollution, and traffic on residential environments.

Policy j states that where new commercial development occurs, it should generally be located in existing commercially zoned areas as follows:

- In small neighborhood-oriented centers provided with pedestrian and bicycle access within reasonable distance of residential areas for walking or bicycling.
- In larger area wide shopping centers located at intersections of arterial streets and provided with access via mass transit; more than one shopping center should be allowed at an intersection only when transportation problems do not result.
- In free standing retailing and contiguous storefronts along streets in older neighborhoods.

Policy k states that the land adjacent to arterial streets shall be planned to minimize harmful effects of traffic; livability and safety of established residential neighborhoods shall be protected in transportation operations.

Policy l states that quality and innovation in design shall be encouraged in all new development design shall be encouraged which is appropriate for the plan area.

Policy m states that urban and site design, which maintains and enhances unique vistas and improves the quality of the visual environment, shall be encouraged.

Policy o states that redevelopment and rehabilitation of older neighborhoods in the Established Urban Area shall be continued and strengthened.”

Economic Development

The Goal is to achieve steady and diversified economic development balance with other important social, cultural and environmental goals.

Policy b states that the development of local business enterprises as well as the recruitment of outside firms shall be emphasized.”

Southwest Area Plan (SWAP)

The site is located in Residential Area Five (5) of the Southwest Area Plan.

Policy 29 states the County and City shall stabilize residential zoning and land use in the plan area.

Policy 30(h) allows up to nine dwelling units per net acre in Residential Area Five (5), when city water and sewer services are available.

Policy 32 states the areas between I-25 and Second Street and the area south of I-40 and west of Paseo Del Volcan shall be used as primary employment because of their location to transportation facilities (rail and highway).

Policy 34 states standards for outdoor lighting shall be implemented to ensure that their use does not interfere with the night sky environment and unnecessarily adjacent properties.

Policy 45 encourages the location of newly developing neighborhood scale commercial and office use be within their defined village centers.

Policy 46 balance economic development and the quality of life for existing communities as well as for newly developed areas.

Policy 49 promotes small-scale community commercial centers, which foster a market place atmosphere; improve profit for small businesses; provide jobs; and circulate dollars within the area economy to enhance a community environment and meet retail, recreational and service needs of area residents.

Bernalillo County Zoning Ordinance

Resolution 116-86 defines criteria for evaluating a Zone Map changes and Special Use Permit applications.

The following policies for deciding zone map changes and Special Use Permit applications pursuant to the adopted Bernalillo County Zoning Ordinance.

- A. A proposed land use change must be found to be consistent with the health, safety and general welfare of the residents of the County.
- B. The cost of land or other economic considerations pertaining to the applicant shall not be the determining factor for a land use change.
- C. A proposed land use change shall not be in significant conflict with adopted elements of the Comprehensive Plan or other Master Plans and amendments thereto including privately developed area plans which have been adopted by the Board of County Commissioners.
- D. Stability of the land use and zoning is desirable; therefore, the applicant must provide a sound justification for land use change. The burden is on the applicant to show why the change should be made.
- E. The applicant must demonstrate that the existing zoning is inappropriate because:
 - 1. An error in the original zone map.
 - 2. Changed neighborhood conditions, which justifies a change in land use or
 - 3. That a different use category is more advantageous to the community as articulated in the Comprehensive Plan or other land use plans as adopted by the Board of County Commissioners.
- F. A land use change shall not be approved where some of the permissive uses in the land use change would be harmful to adjacent property, the neighborhood or the community.
- G. Location on a collector or major street is not itself sufficient justification of apartment, office, or commercial zoning.
- H. A zone change request which would give a zone different from the surrounding zoning to one small area, especially when only one premises is involved, is generally called a "spot zone." Such a change of zone may be approved only when:
 - 1. The change will clearly facilitate revitalization of the Comprehensive Plan and any applicable adopted sector development plan or area development plan; or
 - 2. The area of the proposed zone change is different from surrounding land because it could function as a transition between adjacent zones, because the site is not suitable for the uses allowed in any adjacent zone due to topography, traffic, or special adverse land uses nearby; or because the nature of structures already on the premises makes the site unsuitable for the uses allowed in any adjacent zone.
- I. A zone change request, which would give a zone different from the surrounding zoning to a strip of land along a street, is generally called a "strip zoning." Such a change of zone may be approved only when:
 - 1. The change will clearly facilitate realization of the Comprehensive Plan and any applicable adopted sector development plan or area development plan; or

2. The area of the proposed zone change is different from surrounding land because it could function as a transition between adjacent zones, because the site is not suitable for the uses allowed in any adjacent zone due to topography, traffic, or special adverse land uses nearby; or because the nature of structures already on the premises makes the site unsuitable for the uses allowed in any adjacent zone.

Section 18. Special Use Permit Regulations.

- A. By Special Use Permit after receipt of a recommendation from the Bernalillo County Planning Commission, the Board of County Commissioners may authorize the location of uses in any zone in which they are not permitted by other sections of this ordinance; the Bernalillo County Commission may likewise authorize the increase in height of buildings beyond the limits set by previous sections of this ordinance. With such permits, the Bernalillo County Commission may impose such conditions and limitations as it deems necessary:
1. To ensure that the degree of compatibility of property uses which this section is intended to promote and preserve shall be maintained with respect to the special use on the particular site and consideration of existing and potential uses of property within the zone and the general area in which the use is proposed to be located;
 2. To ensure that the proper performance standards and conditions are, whenever necessary, imposed upon uses which are, or which reasonably may be expected to become, obnoxious, dangerous, offensive or injurious to the health, safety, or welfare of the public, or a portion thereof, by reason of the emission of noise, smoke, dust, fumes, vibration, odor, or other harmful or annoying substances;
 3. To preserve the utility, integrity and character of the zone in which the use will be located, without adversely affecting adjacent zones; and
 4. To ensure that the use will not be or become detrimental to the public interest, health, safety, convenience, or the general welfare.

In certain situations based on unique conditions, and where there is evidence of substantial support from the affected neighborhood residents and/or property owners within 100 feet, a Special Use Permit may be recommended for approval by the Board of county Commissioners for any of the specific uses set forth in Section 12, 13, 14, 15, 16, 17, and 18 of the Bernalillo County Zoning Ordinance. The Special Use Permits may be considered by the County Planning Commission only after it has been determined that the requested zone is inappropriate, and that unique conditions and substantial neighborhood support exist.

Section 19: Landscaping and Buffer Landscaping Regulations:

Where a nonresidential zone which is hereafter developed for a business purpose abuts a residentially zoned property, special buffer landscaping is required to minimize noise, lighting and sight impact of the nonresidential activities in the residential area.

- A. Landscaping and buffer landscaping will be required in all zones for office, commercial, industrial, and multifamily residential uses; R-1, A-1, A-2 and M-H residential uses are exempt.
1. Sites of one acre or less:
 - a. There shall be a landscaped setback along all streets of no less than ten feet.
 - b. There shall be a landscaped buffer of six feet between single-family residential uses and office, commercial, industrial, and multifamily residential uses.
 - c. Fifteen percent of all paved areas shall be landscaped. The landscaped setback shall contribute toward this requirement.
 2. Sites one acre and up to five acres. There shall be a landscaped setback along all streets of no less than 15 feet. All other requirements same as 1.b. and 1.c. above.
- B. In a nonresidential zone, a solid wall or a solid fence at least six feet high shall be erected on sides abutting a single family residential use, except for those sides abutting public right-of-way.
- E. Landscaping which dies shall be replaced by the property owner who is obligated to provide it as expeditiously as possible, but in no case longer than 30 days after notification. If the 30-day period falls at a time of the year when planting of landscaping is inadvisable, a waiver may be granted by the Zoning Administrator to allow planting at the earliest possible time. The waiver and date of the planting deadline shall be recorded by the County Zoning Office.
- G. Parking spaces within a parking lot shall be no more than 50 feet from a tree.
- H. Nonconforming Landscaping. Premises which, when they were developed, were not required to be developed in accordance with the Landscaping and Buffer Landscaping Regulations Section of this ordinance, shall be made to conform to this regulation within two years due to the amendment of the map or text of this ordinance.

ANALYSIS:

Surrounding Land Use and Zoning

The subject site is zoned R-1 and surrounded with R-1 zoning developed residentially. Although the surrounding zoning is R-1, there appears to be a number of properties with multifamily dwellings on a number of surrounding properties which appear to have existed prior the adoption of the Zoning Ordinance.

A Special Use Permit for a Contractor's Yard and R-2 Uses (CSU-70045) was approved just west (approximately 500 feet) of the subject site at 1535 Airway Road SW. In addition, SU-1 for a Mobile Home Development, within the municipal limits, exists approximately 275 feet

south of the subject site. This site is development with mobile homes. C-1 zoning exist approximately 250 feet southwest of the subject site developed with commercial uses.

Plans

The site is located in the Established Urban Area as designated by the Albuquerque/Bernalillo County Comprehensive Plan. The Goal of the Established Urban Area is to create a quality urban environment which perpetuates the tradition of identifiable, individual but integrated communities within the metropolitan area and which offers variety and maximum choice in housing, transportation, work areas and life styles while creating a visually pleasing built environment.

This request appears to facilitate the Albuquerque/Bernalillo County Comprehensive Plan and Southwest Area Plan in that the proposed request is of a residential nature in an established residential area, is of a small-scale that contains access and adequate infrastructure with respect to water, sewer and roads and is consistent with the character of existing residential surroundings.

Zoning Ordinance

The Bernalillo County Zoning Ordinance, Section 18(a) (1-5) defines the rationale for the imposition of conditions on particular land use cases with regard to a Special Use Permit. The Board of County Commissioners may impose limitations as it deems necessary to that the proper performance standards and conditions are imposed will not be injurious to the health, safety, or welfare of the public.

Section 9. R-1 Single-Family Residential Zone.

The purpose of this zone is to provide for the development of single-family homes on lots not less than $\frac{3}{4}$ [of an] acre in area, except that where community water and sewer facilities are made available, the lot size may be reduced consistent with development densities in the Albuquerque/Bernalillo County Comprehensive Plan.

The subject site is zoned R-1. Approximately .48 acres in size and currently contains 4 dwellings units (2 residential dwellings and 2 apartments). The existing density exceeds the area requirements for the R-1 zone.

The subject site is located in the Established Urban designated in the Albuquerque/Bernalillo County Comprehensive Plan which calls for an overall gross density of approximately five (5) dwelling units per acre. The existing density on the subject site does not meet appears to meet the allowable density for the Established Urban Area of the Comprehensive Plan. However, the allowable density for Residential Area Five (5) of the Southwest Area Plan allows a gross overall density of nine (9) dwelling units per acre.

This request appears to be consistent with Resolution 116-86 in that there have been changed community conditions consistent with the proposed use surrounding the site and the existence of the structures on the subject site for over twenty years may appear to be unique.

Agency Comments

The Building Division Manager is requiring building and trade permits for the existing units that meet code compliance for multi-family building codes.

The Public Works Division is requiring the submittal of a conceptual grading and drainage plan prior to final approval of this application.

Analysis Summary

Zoning	
Resolution 116-86	This request is consistent with Resolution 116-86 in that the changed community conditions exist with a mixture of single family and multifamily residential uses in close proximity to the site.
	This request is consistent with Resolution 116-86 in that there have been changed community conditions consistent with the requested land use.
Plans	
Comprehensive Plan	Inconsistent with Policy a, Established and Developing Urban designation recommended density criteria of an overall gross density of five dwelling units per acre.
	Consistent with the, Policy a., Established and Developing Urban designation that allows for a full range of urban land uses and the proposed use is in keeping with the integrity and residential character of the community.
Southwest Area Plan	Consistent with Policy 25 and 30 in that the proposed use stabilizes residential zoning and allows up to nine (9) dwelling units per
Zoning Ordinance	In violation of Section 9 of the Zone code, R-2 uses in an R-1 zone.
	Section 18.32.a requires substantial neighborhood support
	Unique conditions may exist in that the structures have been on the subject site prior to zoning.
Other Requirements	
Public Works Division	A conceptual and a final grading and drainage plan
Building Manager	Requiring building and trade permits for the existing units

Conclusion

The subject site has contained the existing structures, although modified, amid the community for over 20 years; and, the residential dwelling unit and apartments appears to respect the integrity and character of the surrounding properties as the land use is of a residential nature.

This request appears to facilitate elements of the Albuquerque/Bernalillo County Comprehensive Plan that call for the stabilization of residential areas in that the existing use is of a residential nature; however, the existing use is not consistent with the allowable density recommended for the Established and Developing Urban area. The Southwest Area Plan, Residential Area 5 allows a gross density of nine dwelling units per acre. This request appears to be consistent with this criterion.

There has been no objection received with this request; however, Section 18.B.32.a of the Zone Code calls for proof of substantial support from neighbor residents (or owners of property) within 200 feet of the site for the proposed special use. The applicant mentioned the support would be forthcoming; however, to date, it has not been submitted. The existence of the structures (prior to modification) on subject site prior to the Zoning Code may appear to be considered as a unique condition.

It appears that a deferral of this request is in order in that the applicant submits the required substantial neighborhood support and the submittal of a conceptual grading and drainage plan to the Public Works Division.

RECOMMENDATION:

Deferral of CSU-20100021.

Adella Gallegos
Associate Program Planner

BERNALILLO COUNTY DEPARTMENT COMMENTS

Environmental Health: No adverse comments.

Fire: No comments received.

Zoning Administrator: No comments received.

Zoning Enforcement Manager:

Must comply with all Bernalillo County Code regulations for this project.

There is a zoning violation for multiple (4) dwellings on one lot of record.

No other adverse comment.

Building Department Manager:

Will require building and trade permits so that existing units meet current code compliance for multi-family building codes.

Public Works:

DRAN:

This property is subject to Bernalillo County Code Chapter 38, "Floods". The site plan included with this Special Use permit application shows extensive existing development. A conceptual grading and drainage plan prepared by an engineer licensed in the State of New Mexico must be submitted to, and approved by, Bernalillo County Public Works prior to final approval of this application.

The conceptual grading and drainage plan must meet minimum design criteria including existing contours and elevations and proposed contours and elevations. A complete drainage plan and/or report, approved by Bernalillo County Public Works, will be required within 60 days following approval of this special use request.

DRE: No comments received.

Parks & Recreation: No comments received.

The 2030 Metropolitan Transportation Plan Long Range Bikeway System Plan designates a proposed bike route within Sunset Rd.

Sheriff's: No comments received

COMMENTS FROM OTHER AGENCIES

MRGCOG: For informational purposes, the functional classification of Sunset Rd is that of urban collector, as per the Current Roadway Functional Classification System Map.

AMAFCA: No comment.

City Planning Department/Development Services: No comments received.

City Open Space: Open Space has no adverse comments.

Municipal Development Department:

Transp. Planning: No comments received

Transp. Development: No adverse comments.

City Transit: No comments.

ABCWUA/Utility Development Section: No comments received.

NM Department of Transportation:

No impacts are anticipated to the NMDOT roadway system.

Albuquerque Public School: This will have no adverse impacts to the APS district.

PNM:/Gas Co. of NM: No comment on the information provided to date.

NEIGHBORHOOD ASSOCIATIONS:

South Valley Coalition of Neighborhood Associations

South Valley Alliance

South West Alliance of Neighbors

Vecinos del Bosque Neighborhood Association

FINDINGS:

1. This request for approval of a Special Use Permit for a Specific Use for Multiple Single Family Dwellings on Lot 5, Sunset Acres Subdivision, located at 720 Sunset Road SW, zoned R-1, containing approximately 0.49 acres..
2. The property is located in the Established Urban Area of the Albuquerque/Bernalillo County Comprehensive Plan and Residential Area Five (5) of the Southwest Area Plan.
3. This request is conflicts with Resolution 116-86 in that the applicant has failed to demonstrate that the existing zoning is inappropriate.
4. This request conflicts with the Albuquerque/Bernalillo County Comprehensive Plan, Established and Developing Urban Area, Policy a. recommended density criteria of an overall gross density of five dwelling units per acre in that the existing land use exceeds the recommended density criteria.
5. This request is a result of a zoning violation for R-2 uses in an R-1 zone.